

REMARKS

In response to the above-identified Office Action, Applicant traverses the Examiner's rejections and seeks reconsideration thereof. In this response, no claims have been amended, no claims have been cancelled and no claims have been added. Accordingly, claims 1-18 are pending.

I. Claim Rejections Under 35 U.S.C. §103(a)

A. In the outstanding Office Action ("Action") Claims 1-2, 4, 8-9, 11 and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,865,188 issued to Marquez ("Marquez") in view of U.S. Patent No. 3,949,765 issued to Vallis ("Vallis"). Applicant respectfully traverses this rejection for at least the following reasons.

To establish a *prima facie* case of obviousness, the Examiner must show the cited references, combined, teach or suggest each of the elements of a claim. Applicant respectfully submits, neither Marquez nor Vallis teach or suggest "a guide pin" extending farther from the first head and the second head than the plurality of bristles as recited in Claims 1, 8 and 15. In addition, the references fail to teach or suggest both "a first plurality of bristle groups" and "a second plurality of bristle groups" extending from the first head and the second head respectively as recited in Claim 8.

In the outstanding Action, the Examiner alleges Marquez discloses a brush for straightening hair having a first plurality of bristle groups 16, 21 and second plurality of bristle groups 24 however admits Marquez fails to teach or suggest a guide pin and instead relies upon Vallis to teach this element. See Action, page 2. In particular, the Examiner alleges Vallis discloses a brush for drying hair having a guide pin (8 or 19 Fig. 5) disposed in a plurality of bristle groups (col. 2, lines 29-30). See Action, page 2. The Examiner alleges it would have been obvious to one of ordinary skill in the art to employ guide pins as taught by Vallis into the brush of Marquez for the purpose of an easy way to penetrate hair through the scalp. See Action, page 2. Applicant respectfully disagrees with the Examiner's conclusion for at least the reasons that the Examiner mischaracterizes the teachings of Marquez and Vallis and fails to provide the requisite motivation for the combination.

Applicant respectfully submits, bristle 8 and 19 of Vallis may not be relied upon to teach or suggest a “guide pin” disposed within each bristle group as required by Claims 1, 8 and 15. As evidenced by Applicant’s specification, a guide pin serves to guide surrounding bristles. See Application, page 4, paragraph [0015]. Vallis does not characterize bristles 8 and 19 as guide pins or suggest they provide any sort of a guiding function. Instead, Vallis teaches bristles 8 and 19 part the hair to facilitate the flow of air from the attached hairdryer and serve to tone the scalp by stimulating blood circulation. See Vallis, col. 2, lines 42-59. Neither of these described functions of bristles 8 and 19 suggest bristles 8 and 19 are Applicant’s claimed “guide pins.”

In addition, bristles 16, 21 on first brush head 10 of Marquez may not be relied upon to teach a first plurality of bristle groups as required by Claim 8. Marquez expressly states that bristles 16 (e.g. 19, 21) are individual bristles “provided in a grid arrangement with about 25 to 36 individual bristles per square inch.” See Marquez, col. 2, lines 49-52. Accordingly, the bristles of first brush head 10 may not be characterized as bristle groups. Thus, the Examiner inappropriately relies upon Marquez to teach both a “first brush head having a first plurality of bristle groups” and a second brush head having a “second plurality of bristle groups” as required by Claim 8.

Even if it were possible to find the references teach each of the above recited elements, and Applicant does not believe it is, there is no motivation to incorporate the alleged guide pins of Vallis into Marquez. The Examiner alleges the combination would be obvious for the purpose of providing “an easy way to penetrate the hair through the scalp.” See Action, page 3. Applicant respectfully submits, one of ordinary skill in the art would not find the combination obvious on this basis at least for the reason that hair is not penetrated through the scalp.

Moreover, Marquez teaches a first brush head 10 with individual bristles 16 having a rigid shaft 19 and bulb 20 and a second brush head 12 having a plurality of bristles tufts 27. See Marquez, col. 2, lines 39-67. Marquez teaches the hair may be straightened by squeezing a portion of wet hair between the heads near the scalp and slowly pulling away from the scalp while the hair is blow dried. See Marquez, col. 1, lines 50-55. Marquez teaches the bristle combination provides for excellent gripping of

the hair while still allowing the brush to easily move through the hair. See Marquez, col. 2, lines 4-9. It can be seen from Figure 2, that due to the bristle combination large spaces remain between bristles 16 and 24 when the hairbrush faces are squeezed together. One of ordinary skill in the art would recognize this arrangement as being an essential feature that allows for ease of movement of the hairbrush through the hair. The addition of more bristles to the hairbrush of Marquez would eliminate the space provided between the bristles likely resulting in increased pulling and tangling of the hair when the hairbrush is pulled to the hair ends. One of ordinary skill in the art would certainly not understand a modification which impedes hairbrush performance in this manner to be desirable.

Thus, for at least the foregoing reasons, neither Marquez nor Vallis alone or in combination may be relied upon to teach or suggest all the elements of Claims 1, 8 and 15. Since the references fail to teach or suggest all the elements of Claims 1, 8 and 15, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 1, 8 and 15 under 35 U.S.C. §103 as obvious over Marquez in view of Vallis.

In regard to dependent Claims 2 and 4, these claims depend from Claim 1 and incorporate the limitations thereof. Dependent Claims 9 and 11 depend from Claim 8 and incorporate the limitations thereof. Dependent Claims 16-17 depend from Claim 15 and incorporate the limitations thereof. Thus for at least the reasons discussed above with respect to Claims 1, 8 and 15, Marquez and Vallis further fail to teach or suggest all the elements of Claims 2, 4, 9, 11 and 16-17. Since the references fail to teach or suggest all the element of Claims 2, 4, 9, 11 and 16-17, a *prima facie* case of obviousness may not be established. Applicant respectfully requests withdrawal of the rejection of Claims 2, 4, 9, 11 and 16-17 under 35 U.S.C. §103(a) as being obvious over Marquez in view of Vallis.

B. In the outstanding Action Claims 2, 7 and 10, 14-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marquez in view of Vallis and further in view of U.S. Patent No. 5,888,578 issued to Sanduja et. al. ("Sanduja"). Applicant respectfully traverses this rejection for at least the following reasons.

Applicant respectfully submits, for at least the reasons previously discussed, Marquez and Vallis fail to teach or suggest the element of a “guide pin” disposed within a plurality of bristles as required by Claims 2, 7 and 10, 14-18. In addition, the references fail to teach or suggest both a first brush head having “a first plurality of bristle groups” and a second brush head having “a second plurality of bristle groups” as required by Claim 8. The Examiner has not pointed to, and Applicant is unable to discern, a portion of Sanduja teaching these elements. Thus, for at least the foregoing reasons, Claims 2, 7 and 10, 14-18 are not *prima facie* obviousness over Marquez in view of Vallis and further in view of Sanduja.

Moreover, in regard to Claims 10 and 18, there is no motivation to combine Marquez and Vallis with Sanduja to teach coating of the hairbrush bristles with ions. As previously discussed Marquez teaches a dual head hairbrush and Vallis teaches a hairbrush coupled to a hairdryer. In contrast, Sanduja teaches a disposable toothbrush having a mint flavored toothpaste bonded to the bristles. See Sanduja, Abstract. Sanduja teaches ferrous ions or any similar metal ion safe for mouth application may be used as a graft initiator for grafting the toothpaste composition to the bristles. See Sanduja, col. 4, lines 61-63. One of ordinary skill in the art of hairbrushes would not consider teachings to a toothbrush and toothpaste composition in developing a hairbrush as it is nonanalogous art. Moreover, one with such skill would not consider a graft initiator comprised of ferrous ions for grafting toothpaste onto a bristle to teach a suitable ion for removing free radicals from the hair. Sanduja teaches the use of positive ions, such as for example ferrous ions to help bond a toothpaste composition to toothbrush bristles. As evidenced from Applicant’s specification, ions suitable for removing free radicals from hair, are for example, negative ions. See Application, page 5, paragraph [0017]. Thus, even if one of ordinary skill in the art were to consider the teachings of Sanduja, the skilled artisan would not understand ferrous ions to be suitable for removing contaminants from the hair.

Moreover, in regard to Claims 7 and 14, the Examiner states use of boar bristles would have been obvious in view of Marquez and Vallis because it has been held that the selection of materials on the basis of its suitability for the intended use is a matter of obvious design choice. See Action, page 3. The Examiner however fails to cite to any

authority or support for this conclusion and further fails to show boar bristles would be suitable for blow drying wet hair. Neither Marquez nor Vallis teach or suggest the use of boar bristles and instead teach the use of synthetic bristle materials for use on wet hair, such as nylons or plastics. One of ordinary skill in the art would understand that boar bristles are generally softer than synthetic bristles and thus would not understand any advantage to incorporating softer bristles into the brush taught by Marquez for combing through wet hair. Accordingly, upon reviewing Marquez and Vallis one of ordinary skill in the art would not understand the incorporation of boar bristles to be a desirable modification to Marquez in view of Vallis.

Thus, for at least the foregoing reasons, neither Marquez, Vallis nor Sanduja alone or in combination may be relied upon to teach or suggest all the elements of Claims 2, 7, 10 and 14-18. Since the references fail to teach or suggest all the elements of Claims 2, 7, 10 and 14-18, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 2, 7, 10 and 14-18 under 35 U.S.C. §103(a) as obvious over Marquez in view of Vallis and further in view of Sanduja.

C. In the outstanding Action Claims 5-6 and 12-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marquez in view of Vallis and further in view of U.S. Patent No. 4,217,915 issued to Gress et. al. ("Gress"). Applicant respectfully traverses this rejection for at least the following reasons.

Claims 5-6 depend from Claim 1 and Claims 12-13 depend from Claim 8 and incorporate the limitations thereof. For at least the reasons previously discussed, neither Marquez nor Vallis teach or suggest the element of "a guide pin" disposed within a plurality of bristles as found in Claims 5-6 and 12-13. In addition, the references fail to teach or suggest both a first brush head having "a first plurality of bristle groups" and a second brush head having "a second plurality of bristle groups" as required by Claims 12-13. The Examiner has not pointed to, and Applicant is unable to discern, a portion of Gress teaching these elements. Thus, for at least the foregoing reasons, Claims 5-6 and 12-13 are not *prima facie* obviousness over Marquez in view of Vallis and further in view of Gress.

Moreover, in regard to Claims 6 and 13, Gress may not be relied upon to teach a brush head having “a rounded portion opposite the plurality of bristles.” The Examiner alleges it would have been obvious to incorporate the rounded portion 8 taught by Gress into the hairbrush of Marquez in view of Vallis for the “intended use purpose.” See Action, page 4. Applicant respectfully submits, at least for the reason that the rationale provided by the Examiner for combining the references does not rise to the requisite “convincing line of reasoning” as to why the combination would have been obvious in view of the references (See MPEP §2142), the rejection must fail.

Additionally, Gress teaches element 8 is a circular hollow cylinder and as shown in Figure 2 referenced by the Examiner, the bristles extend around the entire cylinder. See Gress, col. 2, line 26. Neither reference contemplates rounding of the brush head in the manner taught by Gress. Instead, Marquez teaches a dual head brush having flat heads to facilitate straightening of the hair. One of ordinary skill in the art would recognize that when the hair is placed between the flat faces of the heads for drying, a larger area of the hair may be dried flat than if one of the heads were cylindrical as shown in Figure 2 of Gress. Moreover, the addition of a cylindrical head would cause the hair to curl around the brush, an effect contrary to the stated purpose (i.e. straightening hair) of Marquez. In addition, the brush head taught in Vallis must have a flat surface opposite the bristles to allow the brush to be secured to a hair dryer. Thus modifying Vallis to incorporate a cylindrical head 8 as taught by Gress would render the invention inoperable for its intended purpose. Thus, there is no motivation to combine Marquez and Vallis in the manner suggested by the Examiner.

For at least the foregoing reasons, neither Marquez, Vallis nor Gress alone or in combination may be relied upon to teach or suggest all the elements of Claims 5-6 and 12-13. Since the references fail to teach or suggest all the elements of Claims 5-6 and 12-13, a *prima facie* case of obviousness may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 5-6 and 12-13 under 35 U.S.C. §103(a) as obvious over Marquez in view of Vallis and further in view of Gress.

D. Applicant respectfully submits, the Examiner indicates Claim 3 is rejected in the Office Action Summary however fails to discuss or even reference Claim 3 throughout the remainder of the Action. Accordingly, Applicant respectfully requests the Examiner clarify the basis for rejecting Claim 3.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

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Jean Svoboda

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